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APPELLANT PRO SE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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EFRAIN ZAMBRANO CRUZ,

Appellant-Petitioner,

vs.

STATE OF INDIANA,

Appellee-Respondent.

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No. 45A04-0610-PC-576

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas P. Stefaniak, Jr., Judge, and Natalie Bokota, Magistrate  
Cause No. 45G04-0505-PC-5

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**July 12, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

In a pro se appeal from the denial of his petition for post-conviction relief, Efrain Zambrano Cruz asserts that his counsel was ineffective for “failing to adequately argue whether his Indiana sentence would run consecutively to his federal sentence and also as to why he was not credited with the time [he] spent in the custody of the Indiana authorities while awaiting disposition of [his] case.” Appellant’s Br. at 2. We affirm.

## **Facts and Procedural History**

From what we can gather from the skeletal materials provided for our review, on April 26, 2001, the State charged Cruz, under the name Moises Ramos, with dealing in marijuana. In the fall of 2004, Cruz was “reportedly in custody at Federal Medical Center, Lexington, Kentucky,” but then was extradited to Indiana, where the Lake County prosecutor accepted temporary custody of him. Appellant’s App. at 5. On January 6, 2005, the State and Cruz filed a plea agreement in which Cruz agreed to plead guilty to C felony dealing in marijuana. *Id.* at 4. On February 17, 2005, the court entered judgment of conviction, sentenced Jones to two years in the Department of Correction (as previously agreed), ordered the term to run consecutive to his federal sentence, and awarded no days of credit. *Id.*

Approximately three months later, Jones filed a petition for post-conviction relief. *Id.* at 3, 6-12. Thereafter, the State filed an answer, Jones filed a response, and the State filed a second answer. *Id.* at 2-3. On March 28, 2006, Cruz’s post-conviction relief petition was dismissed with prejudice. *Id.* at 2. On April 21, 2006, Cruz filed a motion

to reconsider, which was granted. *Id.* Cruz reactivated his post-conviction action and filed a memorandum in support thereof. *Id.* at 1-2. In July 2006, the State filed proposed findings of fact and conclusions of law, and Cruz responded to them. *Id.* at 1. It appears that no hearing was held regarding the petition for post-conviction relief. *Id.* (9/20/2006 CCS entry: “There are no hearings to be transcribed.”). On August 24, 2006, the court issued an order denying Cruz’s petition, setting out detailed findings and conclusions, and citing relevant excerpts from the guilty plea transcript. *Id.* at 31-35; *see* Post-Conviction Rule 1(6) (“the court shall make specific findings of fact, and conclusions of law on all issues presented, whether or not a hearing is held.”).

According to the chronological case summary, Cruz filed a notice of appeal on September 20, 2006. On November 6, 2006, Cruz filed a case summary and brief, both of which were defective. Upon being alerted to the deficiencies, Cruz filed a new case summary and brief. On December 12, 2006, the State filed a motion to strike Cruz’s brief, for re-briefing, and for the filing of an appellant’s appendix.

On January 9, 2007, we issued an order granting the State’s motion to strike, noting that Cruz’s brief did not comply with the Appellate Rules, observing that no appendix was filed, and requiring him to file an amended brief and an appendix by February 19, 2007. We cautioned Cruz to prepare his brief pursuant to Appellate Rule 46(A) and his appendix pursuant to Appellate Rule 50(B). Specifically, we stated that his appendix “shall include (among other things) the trial court’s chronological case summary, the charging information, the abstract of judgment and/or sentencing order, the verified petition for post-conviction relief, any answer by the State, the trial court’s order

denying [Cruz's] petition, and the notice of appeal.” Thereafter, Cruz filed an appellant’s brief and appendix, and the State filed an appellee’s brief.

### **Discussion and Decision**

Pro se litigants “are held to the same standard as trained counsel and are required to follow procedural rules.” *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. “This has consistently been the standard applied to pro se litigants, and the courts of this State have never held that a trial court is required to guide pro se litigants through the judicial system.” *Id.* “Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*; *see also* Ind. Appellate Rule 46(A)(8)(a) (stating that argument section of appellant’s brief must “contain the contentions of the appellant on the issues presented, supported by cogent reasoning” and that “[e]ach contention must be supported by citations to the authorities, statutes, and the appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.”).

Cruz, appealing from a negative judgment, must show that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *See Reynolds v. State*, 783 N.E.2d 357, 358-59 (Ind. Ct. App. 2003). A post-conviction claim of ineffective assistance of counsel requires the petitioner to show that (1) counsel’s performance fell below an objective standard of reasonableness, and (2) a reasonable probability that but for counsel’s errors, the result of the proceeding would have been different. *See Segura v. State*, 749 N.E.2d 496, 500-01 (Ind. 2001)

(noting standard applicable when asserting ineffective assistance of trial counsel following a guilty plea). “A petitioner’s failure to satisfy either prong will cause the ineffective assistance of counsel claim to fail.” *Taylor v. State*, 840 N.E.2d 324, 331 (Ind. 2006).

In spite of our clear directive in January of this year, Cruz has not favored us with the charging information, the State’s two answers to his post-conviction petition, his response and affidavit, or the notice of appeal. Further, on appeal, Cruz has not submitted the transcripts from either his guilty plea hearing or his sentencing hearing, both of which were apparently sent to him by the clerk’s office on April 28, 2006 and reviewed by the post-conviction court. Moreover, there is no indication that Cruz attempted to introduce affidavits or any other evidence that might support his allegations on post-conviction. In addition, the arguments he presents in his appellant’s brief are vague and disjointed.<sup>1</sup> The combination of these errors precludes us from properly reviewing Cruz’s appeal and leaves us with no choice but to find waiver. *See App. R. 46(A)(8)(a); Howard v. State*, 755 N.E.2d 242, 246 n.4 (Ind. Ct. App. 2001) (finding argument waived where appellant failed “to make a cogent argument and to cite adequate facts and authority supporting his proposition”); *see also Stallings v. State*, 508 N.E.2d

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<sup>1</sup> Within the span of a page and a half, Cruz contends: “If Appellant’s guilty plea was knowingly, voluntary and intelligently entered then we would not be here today litigating this issue. ... The collateral consequence of the plea agreement, which counsel advised [sic] Appellant to agree to, violated Appellant’s constitutional rights by subjecting him to double jeopardy, cruel and unusual punishment and denial of due process. ... The state of Indiana decided to unnecessarily place a detainer on Appellant while he was still in federal custody, unnecessarily because the state had the option of waiting until Appellant’s federal sentence had expired, instead they chose an option that exposed Appellant to the punitive consequences incited by the detainer.” Appellant’s Br. at 2-3.

550, 552 (Ind. 1987) (noting defendant waived issue where he failed to present adequate record to clearly show alleged error; specifically, the record on appeal did not contain transcript of hearing); *Sims v. State*, 771 N.E.2d 734, 737 (Ind. Ct. App. 2002) (citing P-C.R. 1(5), which places burden upon petitioner to establish grounds for relief), *trans. denied*.<sup>2</sup>

Waiver notwithstanding, we opine that if the post-conviction court's findings are indeed supported by facts, Cruz could not show either the deficient performance or prejudice necessary to support an ineffectiveness claim. *See App.* at 31-35. That is, assuming the transcripts are correctly quoted, the court and/or his counsel adequately and accurately explained to Cruz the details of, and rationale for, consecutive sentencing and no double credit in his case prior to acceptance of the guilty plea. *Id.*

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.

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<sup>2</sup> Cruz also contends that the court erred “in denying counsel to perfect the ongoing appeal in violation of his constitutional right to counsel.” Appellant’s Br. at 2. His entire argument on that issue consists of the following: “Appellant would also cite ‘Coss’ to appeal the denial of counsel by the trial court because he was not in custody of the Indiana entity.” *Id.* at 3. This issue is likewise waived for failure to present cogent argument. *See App. R.* 46(A)(8)(a).